Industry's Use of Patents

By JERE E. BROPHY, E.E. IV

BY definition, a patent is an official confirmation of right or privilege, and the constitution says "Congress shall have the power to promote the progress of science and useful arts by securing for limited times to authors and inventors the exclusive rights to their respective writings and discoveries."

Now granted to an inventor, for seventeen years, is the exclusive right to make, use, and sell the results of his brain child, if he makes a full disclosure of his invention. The corporation, as a legal person, has the right to hold patents by having them assigned to the corporation. In this manner the corporation achieves the legal rights of the inventor and has in addition a much greater ability to administer these rights.

Since the basic patent laws of 1792 and 1836, over a hundred years of complexities have arisen between the original concept of the patent as simple time-limited monopoly and the near complete monopolies over long periods. Most of this came about rather easily; "it just grew." In the expansion and development of industry, research laboratories came into being. A great many of the 20,000 to 30,000 patents per year issued by the patent office are a direct result of these large laboratories.

To aid the patent holders in achieving a maximum field for their patents, most large companies use devices such as securing all patents on improvements on basic patents that are about to run out. Another device used is the securing of patents on all possible combinations of elements, processes, and separate parts of an invention. Or, a company may acquire patents on every possible combination of elements surrounding a competitor's patent. The infringement suit may be used as a control ranging from a threat of expensive litigation to product war, as well as a way of preventing another person from stealing an invention. With a large back log of patents a large corporation can usually find some basis for an infringement suit. The challenge may be made without a clear basis of infringement. If both patents seem to be of equal weight and the corporations equally strong a cross-licensing agreement is usually reached. If the challenged patent is sound but the holding company is small it may incur the expense of a trial up to the Supreme Court or accept a license by the large manufacturer setting rigid limits on production and prices.

All of these methods were generally accepted prior to the war. Continuance of the patent squabble is, in some cases, resulting in a loss of production and efficiency. Thurman Arnold's investigations into a zinc company's patents handling is revealing. The company holds patents on two efficient, low-cost methods of producing zinc. One is a fractionating process for producing special high grade zinc and the other is a process of producing high grade zinc using a vertical retort. The only other means of producing special high grade zinc is an electrolytic process which has higher cost. There are five electrolytic plants in the U. S. The patent holder has granted only one fractionation license with a production restriction of 5,000 tons per year and the zinc is to used only by the licensee's subsidiaries. This license was the result of litigation. Under restrictions to produce only two specific lower grades of zinc one license was granted to use the vertical-retort patents. War has eased the production restrictions but the zinc company has not licensed any more companies. When the boom for zinc began last year requests were made to get a license for building and operating a fractionating unit. The request was refused. At a greater cost and two months more time an electrolytic refining plant was built. As the demand further increased low grade zinc was transported from shelters in the West to the eastern company for refining by fractionating.

A similar case exists in the production of atabrine. Since this is a synthetic drug for use in the treatment of malaria it is in great demand by the Army. This drug has become of great importance since the supply of quinine has been shut off. Recently the owner of the patent subcontracted another pramaceutical company to perform certain intermediate steps in the manufacture of atabrine and ship the unfinished product back to the patent owner to be finished.

In some industries such as the radio industry and the oil industry the problems that have arisen through the numerous patents on similar processes and elements have been partially solved through an intricate system of cross-licensing and pooling of the patents.

This pooling can be very bad if mishandled and good if used to aid in production in the entire industry. If a group of companies forms a tight group which licenses under their patents, fix prices, stabilizes production, refuses licenses to

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outsiders, and divides the market, it will have a very close control of production which would often not be in the best interests of the public or a nation at war. An example of this is the glass container industry. One patent holding company combined with six of the largest glass-machinery makers and glass-containers manufacturers and now firmly restrict and supply 96 per cent of the glass-container industry. His licenses stipulated where a product may be sold, how many may be made, and what kind of product could be made.

Since before the last war most of the automobile manufacturers have placed most of their patents in a pool open to any member of the industry's association. In this manner profits were derived on the basis of efficiency, production, and value alone.

The Manufacturers Aircraft Association has another method of handling the same problem. A system of voluntary cross-licensing was originated to help a new industry start in a hurry. The association classifies all of its members patents in three classes; basic patents, in which the patentee sets his own royalties; intermediate patents, an arbitration board sets a fair royalty; and minor patents, which are royalty-free.

Pools like the last two mentioned are very few and for this reason the war and its reconstruction period will tend to cause compulsory licensing since patent pools are very difficult to control.